

J. D. ...

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF SEATTLE TO AIRWEST
AIRLINES, LTD.

SEATTLE SHORELINES COALITION
and JOHN FOX,

Appellants,

v.

CITY OF SEATTLE and AIRWEST
AIRLINES, LTD.,

Respondents.

SHB No. 78-2

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a substantial development permit to AirWest Airlines, Ltd. by the City of Seattle, came before the Shorelines Hearings Board, Dave J. Mooney, Chairman, Chris Smith, Gerald D. Probst, Robert E. Beaty, and Rod Kerslake at a hearing on May 25 and 26, 1978 in Seattle. David Akana presided.

Appellants were represented by their attorney, Glenna S. Hall; respondent permittee was represented by its attorneys, John W. Sweet

1 and James M. Neff; respondent City was represented by Ross Radley,
2 Assistant City Attorney.

3 Having heard the testimony, having examined the exhibits, and having
4 considered the contentions of the parties, the Shorelines Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I

8 AirWest Airlines, Ltd. (hereinafter "AirWest") is a Canadian
9 airlines offering scheduled floatplane service between Victoria, British
10 Columbia and Lake Union in Seattle, Washington pursuant to a foreign air
11 carrier permit authorized by the United States government. The carrier
12 permit is effective during the period from July 23, 1976 through
13 July 23, 1979.

14 II

15 Prior to commencing operations, AirWest was advised by the City
16 of Seattle (hereinafter "City") that a shoreline substantial development
17 permit for its vessel-mounted terminal facility was not required. The
18 vessel, documented by the United States Coast Guard; named the "Unison,"
19 was a 35' x 56' barge with facilities for inspection of arriving passenger
20 and baggage by United States Customs Officers.

21 III

22 In June, 1977, regularly scheduled service between Seattle and
23 Victoria with two flights per day was commenced using DeHaviland Twin
24 Otter float planes. Thereafter, the City required AirWest to apply
25 for a shoreline permit for its barge. Application was made and a
26 shoreline permit was issued on February 6, 1978. After receiving its
27 shoreline permit, AirWest surrendered the documentation for its vessel

FINAL FINDINGS OF FACT,

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1 to the Coast Guard.

2 IV

3 The substantial development is a 35' x 56' barge upon which is
4 constructed a 28' x 30' building. The facility is used as a ticketing
5 and waiting area for passengers. One third of the building is devoted
6 to a customs inspection area. When an aircraft arrives, it is moored
7 to the open area of the structure. Passengers have direct access to the
8 deck from the plane. Because the lake elevation varies, the deck must
9 be floating in order to remain at the same level as the aircraft floats.
10 The facility is located in an Urban Stable/Lake Union Environment
11 designation in the City's shorelines master program. Lake Union is not
12 designated as a shoreline of statewide significance. No aircraft
13 refueling will occur at the facility. Restrooms are provided at the
14 adjacent AGC Building. The facility will be moored entirely within the
15 inner harbor line and pierhead line.

16 V

17 The shoreline permit application and published notice describe
18 the development as a "barge used as loading and unloading area and
19 U.S. customs and immigration service and inspection area for international
20 air passengers." The shoreline permit allows Airwest to "moor a floating
21 U.S. Customs Terminal building 28' x 30' x 13'7" high, located on a
22 float 35' x 56, 6' [sic] x 1'3" high, to a pier on the south side of
23 the AGC Building" on Lake Union, at 1200 Westlake North.

24 VI

25 In October, 1977 the City issued a "Final Declaration of Environmental
26 Non-Significance" which considered, among other things, the facility
27 and the noise from the aircraft based upon two flights per day. The

1 noise generated by the AirWest aircraft, DeHaviland Twin Otter float
2 planes, is less than those of other aircraft now being operated on Lake
3 Union. There are about 6000 flights per year from other, noiser
4 aircraft on Lake Union. We are not persuaded that AirWest's flight
5 schedule, even if doubled, would result in added noise upon which we
6 could find the City's declaration of non-significance to be erroneous.

7 VII

8 The international air service provided by AirWest was authorized
9 by the Civil Aeronautics Board after AirWest demonstrated that the
10 public interest and convenience would be met. CAB Docket 28884. (Ex. R-8)

11 VIII

12 Any Conclusion of Law which should be deemed a Finding of Fact
13 is hereby adopted as such.

14 From these Findings the Board comes to these

15 CONCLUSIONS OF LAW

16 I

17 Although the terminal facility has been constructed and is moored on
18 Lake Union, we evaluate the substantial development as though it were not
19 yet constructed. Appellants, who oppose the instant permit, have the
20 burden of proving inconsistency with the City's adopted and approved
21 shoreline master program and the provisions of RCW 90.58. RCW 90.58-
22 .140(7).

23 II

24 Appellants contend that the project description is not included
25 within the description given in the permit application and published
26 notice. We conclude otherwise. The project description in the permit
27 more specific in nature and is included within the general description on

1 the permit application and notice.

2 III

3 Appellants' contention that Section 21A.71(h) itself requires
4 that an environmental impact statement be prepared under the State
5 Environmental Policy Act is without merit. Whether a proposal will
6 result in a significant adverse impact upon the quality of the
7 environment, i.e., the threshold decision, is based solely upon the
8 evaluation of the Environmental Checklist. WAC 197-10-360;
9 WAC 197-10-365.

10 IV

11 The City's examination of the "total proposal" as described in
12 Finding of Fact VI was reasonable in scope under the circumstances of
13 this case, and consideration of additional flights was not required.

14 V

15 The shoreline master program provides that a water-dependent use
16 includes marine commercial uses for "terminal and transfer facilities for
17 transport of passengers or goods over water." Section 21A.155. The
18 instant passenger terminal facility falls within this definition. Even
19 assuming that such facility is not water dependent and that some parts of
20 the facility could be placed upon land, we conclude that the entire
21 terminal facility is a reasonably necessary accessory to the international
22 air service, which operates water dependent seaplanes. Section 21A.40.
23 The granting of a shoreline permit for this project does not create a
24 precedent for non water-dependent developments.

25 VI

26 Water-based aircraft facilities are permitted as a shoreline special
27 use in the US/LU environment set forth in Table 3, Section 21A.40,

1 of the shoreline master program and are subject to Sections 21A.94 and
2 21A.71(h) of the shoreline master program.

3 Section 21A.94(b) provides that:

4 Float or seaplane facilities are authorized
5 only in US, US/LU, US/CW and UD environments
6 and then only if the impact of the operation
will be compatible with surrounding uses.

7 Section 21A.71(h) provides that:

8 (h) Uses which are identified in Table 3,
9 Section 31A.40 [sic] as special uses in a
10 particular environment may be authorized
by the Director when the following additional
conditions are satisfied:

- 11 1. the use will not have a significant
12 adverse effect upon the environment
13 or other adjacent or nearby uses, or
14 such adverse effects can be mitigated,
15 or the benefits of permitting such use
16 outweigh such adverse effects;
- 17 2. the use will not interfere with public
18 use of public shorelines;
- 19 3. design and appearance of the development
20 will be compatible with the design and
21 appearance of surrounding uses; and
- 22 4. the use will not be contrary to the
23 general intent of the Shoreline Master
24 Program of The City of Seattle.

25 The burden of proof that all of the foregoing facts and
26 conditions exist shall be on the applicant.

27 In authorizing a shoreline special use, the Director
may impose requirements and conditions in addition
to those expressly set forth in this Article with
respect to location, installation, construction,
maintenance and operation and extent of open spaces
as may be deemed necessary for the protection of
other properties in the shoreline environment or
vicinity and the public's interest in the shoreline.

28 The instant substantial development conforms with Section 21A.94(b) if
29 it is a "float or seaplane facility" which is compatible with

1 surrounding uses. "Facility" is not defined in the shoreline master
2 program. Webster's Third New International Dictionary (1971, Unabridged),
3 page 812, defines facility as "something that is built, constructed,
4 installed, or established to perform some particular function or to
5 serve or facilitate some particular end." We conclude that the instant
6 substantial development is such a "facility" because the floating
7 terminal is reasonably necessary for international airline operation,
8 including accommodation for its patrons and customs officials. We
9 also conclude that the AirWest facility is compatible with surrounding
10 uses. See Section 21A.71(h)(3).

11 The second applicable regulation, Section 21A.71(h), sets forth
12 the remaining four conditions expressly applicable to the facility.
13 We conclude that the proposed use will have no significant adverse
14 effect, and what little adverse effect results is outweighed by the
15 benefits from such use. Section 21A.71(h)(1). Moreover, the floating
16 facility can be easily removed if the service is terminated. We further
17 conclude that the proposed use will not interfere with the public
18 shorelines, but rather, is itself a reasonable use of the particular
19 shoreline in question. Section 21A.71(h)(2). After studying the design
20 and appearance of the development, we find it to be compatible with the
21 surrounding uses. Section 21A.71(h)(3); Section 21A.94(b). The facility
22 is attractive and blends well next to the AGC Building and its parking
23 lot. Finally, we find the use consistent with the general intent of
24 the shoreline master program. Section 21A.71(h)(4). In so finding, we
25 have considered the Goals and Policies (Section I) and other cited

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
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1 provisions of the master program.¹

2 VII

3 The terminal facility is consistent with the relevant provisions
4 the shoreline master program and the provisions of RCW 90.58 for
5 "shorelines" of the state. Accordingly, the action of the City issuing
6 the permit should be affirmed.

7 VIII

8 Any Finding of Fact which should be deemed a Conclusion of Law
9 is hereby adopted as such.

10 From these Conclusions the Board enters this

11 ORDER

12 The action of the City issuing a substantial development permit
13 to AirWest is hereby affirmed.

14


15 1. Section 21A.25 (US/LU Environment). The facility is not
16 subject to the regulations on floats, Sections 21A.73 (floating
17 homes) and .103 (floats for water dependent recreational uses.);
18 Neither does Section 21A.74 (Business and Commercial Uses) subsume
19 Section 21A.94. Section 21A.35 (view corridor) was not shown to be
20 violated.

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 DONE this 28th day of June, 1978.

2 SHORELINES HEARINGS BOARD

3 
4 DAVE J. MOONEY, Chairman

5 
6 CHRIS SMITH, Member

7 
8 GERALD D. PROBST, Member

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10 ROBERT E. BEATY, Member

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12 ROD KERSLAKE, Member

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27 FINAL FINDINGS OF FACT,
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